

**UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FREEDOM FROM RELIGION
FOUNDATION, INC., JANE DOE,
JOHN ROE, and JANE NOE
Plaintiffs,

v.

JUDGE WAYNE MACK and
MONTGOMERY COUNTY, TEXAS
Defendants.

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CASE NO. 4:17-cv-881

NOTICE TO CLARIFY PLAINTIFFS' CLAIMS AGAINST DEFENDANT MACK

Plaintiffs come now before the Court to file this Notice to Clarify Plaintiffs' Claims, as requested by the Court's October 3 Order (Dkt. 40).

Plaintiffs bring claims against Defendant Wayne Mack only in his official capacity as the presiding officer over Montgomery County's Justice of the Peace Precinct 1, not in his individual, personal capacity. As the Court observed, Defendant Mack's raised defenses of qualified immunity and judicial immunity are unavailable to him since he is not sued in his personal capacity. Plaintiffs briefed the unavailability of qualified immunity in their Response in Opposition to Defendant Mack's Motion to Dismiss (Dkt. 28 at 24). The same result holds true for judicial immunity as a matter of law. *See, e.g., Turner v. Houma Mun. Fire & Police Civil Serv. Bd.*, 229 F.3d 478, 482–484 (5th Cir. 2000) (summarizing case law and holding that absolute immunity defenses, including quasi-judicial immunity, are inapplicable in official capacity actions).

Plaintiffs regret any confusion caused by not specifying that Defendant Mack is sued only in his official capacity in their First Amended Complaint.

DATE: October 5, 2017

Respectfully submitted,

/s/ Sam Grover

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CERTIFICATE OF SERVICE

I, Sam Grover, hereby certify that on this the 5th day of October, 2017, a true and correct copy of the foregoing document was transmitted using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Sam Grover
Sam Grover